

Leslie Tchaikovsky
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1 being given a reasonable time to cure any other arrearages, not to
2 exceed six months.

3 At the conclusion of the hearing, the Court ordered counsel
4 for the parties to file post-hearing briefs. The Court indicated
5 that it would then rule without further hearing. Fairbanks filed
6 a declaration to which was attached various documents. Several of
7 the attached documents consist of notices of the intent to obtain
8 force placed insurance. The debtor responded, and Fairbanks filed
9 a reply.

10 The Court has considered the documents and papers submitted
11 after the hearing. The annual notices of Fairbanks of their
12 intent to obtain force place insurance are not particularly
13 helpful. Although they estimate the annual cost of the insurance
14 and inform the debtor that this will result in a "substantial
15 increase" to the mortgage payment, they do not specify the amount
16 of the increase.

17 However, among the attachments is an Annual Escrow Account
18 Disclosure Statement dated March 5, 2003, which indicates that a
19 force place insurance cost of \$40 has been accruing each month.
20 This bankruptcy case was filed on December 5, 2003. Therefore,
21 the debtor was put on notice by the time she filed her bankruptcy
22 petition that, in addition to her monthly mortgage payment, her
23 failure to obtain insurance resulted in her owing Fairbanks \$40 a
24 month each month in addition to her regular mortgage payment. She
25 failed to pay Fairbanks this amount. In addition, as noted by
26 Fairbanks, each month the debtor paid Fairbanks only \$504.17

1 whereas her monthly mortgage payment without regard to the cost of
2 the insurance was \$504.69.

3 Based on the foregoing, the Court concludes that the debtor
4 was on adequate notice of the cost of the force placed insurance
5 and that Fairbanks was entitled to impose late charges. Because
6 the debtor was delinquent post-petition, Fairbanks was also
7 entitled to charge attorneys' fees assuming it was oversecured.
8 Fairbanks may add the attorneys' fees to its proof of claim. The
9 debtor may object to the fees if she believes that Fairbanks is
10 not oversecured or if the attorneys' fees appear unreasonable in
11 amount. The debtor will be given six months to cure the post-
12 petition arrears, with an equal payment due each month on the
13 first day of the month, late on the 15th, Fairbanks to provide a
14 ten day letter in the event of nonpayment within the grace period.

15 Counsel for Fairbanks is directed to submit a proposed form
16 of order in accordance with this memorandum.

17 END OF DOCUMENT
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COURT SERVICE LIST

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